IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 114 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

RAMBHAI N AMIN

Appearance:

1. INCOME TAX REFERENCE No. 114 of 1987
MR MANISH R BHATT for Petitioner No. 1
MR SN SOPARKAR for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference at the instance of the revenue, the following questions have been referred for the opinion of this Court in respect of assessment year 1982-83:-

(i) "Whether, in law and on facts the provisions of section 64 (1)(i) of the Income Tax Act, 1961 were not attracted for including the share income of Smt. Achalaben in the hands of the assessee, who is the father-in-law of Achalaben ?"

(ii) "Whether, when assessee the father-in-law of Smt. Achalaben had gifted Rs.10,000/- out of which investment, she became a partner in the firm of M/s.Mira Industries, the provisions of section 64 (1)(vi) of the Income Tax Act, 1961 were not attracted?"

2. We have heard Mr. Akil Kureshi, learned counsel for the revenue and Mr. Soparkar with Mr. Manish Kaji for the respondent-assessee.

3. The assessee, an individual, filed his return of income for the assessment year 1982-83. During the course of assessment proceedings, the I.T.O. noted that the assessee had made a gift of Rs.10,000/- to his daughter in law Smt. Achala S. Amin on 14-5-1974, who invested the gifted amount in M/s. Meera Industries in the financial year 1974-75 and became a partner of the said firm to the extent of 14% share. On the grounds that Smt. Achalaben was not a working partner nor was possessing any technical or professional qualification nor was having any experience of the business nor had she made any further contribution to the share capital of the firm till financial year 1981-82, the I.T.O. held that there was a proximate connection between the assets transferred by the assessee to Smt. Achalaben and the income arising to her from M/s. Meera Industries. The I.T.O., therefore, included the share income of Smt. Achalaben from M/s. Meera Industries amounting to Rs.91,825/- to the total income of the assessee. In appeal, the C.I.T. (Appeals) relied on the decision of the Supreme Court in C.I.T vs. Premabhai Parekh 77 ITR 27 and held that the income of Smt. Achalaben could not have been clubbed with the income of the assessee. The Tribunal confirmed the decision of the C.I.T. (Appeals). Hence, this reference at the instance of the revenue.

4. Having heard the learned counsel for the parties and having gone through the decision of the Apex Court in CIT vs. Prembhai Parekh 77 ITR 27 and the decision of

the Apex Court in CIT vs. Smt. Pelleti Sridevamma (1995) 216 ITR 826, we find that the facts in the instant case are similar to the facts in Premabhai Parekh's case in which the Apex Court held that it must be established that the income in question arose directly or indirectly from the gifts in question. In the facts of Premabhai Parekh's case, there was no dispute that the assessee had transferred to each of his minor sons a sum of Rs.75,000/- and that the amount contributed by those minors in the share of the partnership firm came from those amounts, but the Court posed the question -whether it can be said that the income in question arose directly or indirectly from the assets transferred by the assessee to those minors when the income of minors arose as a result of their admission to the benefit of their partnership. Even though they were admitted to the benefit of the partnership because of the contribution made by them, but the Court held there was no proximity between the transfer of assets and the income in question. The Court held that the connection between the gifts in question and income in question was a remote one. In our view, the facts in the instant case are similar except that instead of the donee being minor sons, in the instant case the donee was the daughter-in-law of the assessee.

5. Considering the fact that although son's wife is included in section 64 (1)(vi) so as to be within the list of relatives to be hit by the clubbing provision, the Tribunal rightly pointed out that Explanation 3 to section 64 (1) only covered at the relevant time the assets transferred directly or indirectly by an individual to his spouse or minor child which are invested by the spouse or minor child in any business and the said Explanation did not, for the relevant assessment year, cover the son's wife. It is clear that Explanation 3 was enacted for applying the clubbing provision to income arising from the transfer of assets to a close relative and investment of such gifted amount in a business. However, the very fact that the legislature did not include the daughter-in-law within the sweep of Explanation 3 is an indication that the Legislature did not intend to apply such clubbing provision to the investment of the amount of gift to daughter-in-law in the business so that the income arising from the amount gifted to the daughter in-law and invested in the business of the donor could be clubbed with the income of the business of the donor.

6. In view of the above discussion, we answer both the questions referred to us in the affirmative i.e. in

favour of the assessee and against the revenue.

7. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-